

## 2004-04-28 PNB Meeting Minutes

### MINUTES OF THE PACIFICA FOUNDATION BOARD OF DIRECTORS

SPECIAL MEETING April 28, 2004

#### Directors present:

Dave Adelson, Teresa Allen, Henry Cooper, Marty Durlin, Sonali Kolhatkar, Ray Laforest, Ambrose I. Lane Sr. (late), Miguel Maldonado, Roger Manning, Kalonji T. Olusagun, Sarv Randhawa, Mark Roberts, Julie Rodriguez, Gerald Sanders, Wendy Schroell, Zarinah Shakir, Alice Shields, Carol Spooner, William Walker, Donna Jo Warren

#### Directors not present:

Samuel Kiteka, Vicki Santa

#### Also present:

Pacifica officers - Dan Coughlin -Executive Director(ED), Lonnie Hicks Chief Financial Officer(CFO)

LSB chairs - Bertold Reimers [WBAI], NA Jim Brown [WPFW], Riva Enteen [KPFA], Don White [KPFK], Mike Martin[KPFT]. David Horne - Pacifica Attorney.

Station Managers - Ron Pinchback [WPFW], Jim Bennett [KPFA], Eva Georgia [KPFK], Duane Bradley [KPFT], Don Rojas [WBAI].

All times EDT

3:45pm PNB Chair Marty Durlan convenes meeting.

Reviews agenda and meeting procedures.

#### Agenda:

- 1) Chair reviews agenda, states purpose of this special meeting and gives background, and explains meeting procedures
- 2) Presentations from ED, CFO, station managers and LSB chairs regarding document requests
- 3) Discussion and responses from PNB members
- 4) Vote on operating policy regarding documents
- 5) Executive session to discuss board liability insurance policy
- 6) Adjourn

1) Chair comments: [the following from written memo read by chair]

**PURPOSE OF SPECIAL MEETING:** to develop a documents policy that is reasonable, takes into account the legal rights of all parties, and allows us to move forward. Do not forget this is a temporary operating policy, and we will revisit this at our regular board meeting in June.

**BACKGROUND:** Conflict between directors and national staff concerning the rights of directors, and the practical and legal liability issues of supplying documents. Same conflict mirrored by delegates to LSBs and station staffs.

Legal opinion by Kevin Finck and David Horne is that PNB members have strong and broad right to documents, for the purpose of carrying out their duties. We do not have the right to publish, or to "bandy about" certain types of info: personnel info, pending or threatened litigation, specific donor info, arbitron info.

It is also the opinion of the lawyers that salary info should be made available to PNB members.

They also say that, both from a business and liability perspective, it makes sense to encourage persons associated with the foundation to work through appropriate channels. Second, with regard to members of the national board, although the foundation can recommend a procedure and standards for information requests, directors have a legal right to request information apart from any such procedures. Accordingly, the staff is not entitled to resist an information request from a director on the grounds that the director failed to follow the preferred request procedure (although the board is entitled to question a director regarding failure to follow any foundation policy).

The memo by Kevin Finck goes into detail about the rights of Directors vs. Delegates, who have no more rights than members of the organization, but whose duties require them to have access to certain types of documents. The decision about which documents should be released to delegates rests with the Pacifica National Board.

There will be comments from ED, CFO and GMs and then discussion amongst the directors. Then policy proposals will be read.

## 2) Presentations from ED, CFO, station managers and LSB chairs

Executive director Dan Coughlin - Thanks board for meeting. Four areas of concern: volume of request; station staff and unions concerned about privacy issues of workers and members; 2 national board members have threatened lawsuits; and growing adversarial relation between some directors and staff.

Chief Financial Officer Lonnie Hicks - 3 areas of concern: whether directors information access rights are absolute; litigation - we are under threat of litigation over information acquisition and its expensive; and need to form 3 committees to deal with: staff issues, board conduct - with possible sanctions, and information issues.

#### Station General Manager statements:

- Jim Bennett, KPFA - Reads letter [see appendix] from union person that protests behavior of some KPFA LSB members with regard to KPFA staff.
- Duane Bradley, KPFT - Reads very large information request at KPFT from KPFT LSB member.
- Eva Georgia, KPFA - Reads from statement [see appendix] from Administrative council [committee of ED, CFO, GMs and PRA]
- Don Rojas, WBAI - continues administrative council statement.
- Ron Pinchback, WPFW - Speaks in support of boards and staff working collaboratively and moving Pacifica forward.

#### Local Station Board Chairs

Riva Enteen, KPFA, Don White, KPFA, Mike Martin, KPFT, Bertold Reimers, WBAI make comments. Remind all that the LSBs have real legal responsibilities and that information is essential for proper execution of duties. Requests having fallen within these needs and management have been largely cooperative.

#### 3) Discussion and responses from PNB members

There is support for setting up a structured process for document/information requests. Disagreement that board is trying to micromanage - much of the problems with past boards/management due to lack of information, openness. Better staff/board communication, more trust, patience and healing needed. CA law and the Pacifica bylaws are clear that directors have an absolute right to all foundation information.

#### 4) Vote on operating policy regarding documents

Discussion of how to present 6 proposals&

#### Chair Durlin Reads proposals:

#### Ambrose Lane Proposal:

Resolved: that all requests for information access shall be submitted BY COMMITTEE CHAIRS to the Executive Director THROUGH the Pacifica Board Chair; that all such requests by PNB members shall be submitted DIRECTLY to the Executive Director; that responses to ALL such requests shall be made within a "reasonable time" frame, reasonable to be defined by the PNB; and that ALL requests that are determined by legal counsel to be "sensitive" shall be referred to the PNB for resolution.

Roles and Rationale: The Executive Director is hired to PROTECT, ENHANCE, AND MANAGE the resources of the corporation; the Board of Directors COLLECTIVELY OVERSEES the protection, enhancement and management of the corporation; the Board CHAIR manages that OVERSIGHT through the Board-established committee chairs and the chairs of the LSBs, since the LSBs are simply Board committees.

It is my opinion that we do not need to do other than use our current logical system to get this job done. If there are blockages that are not acting with integrity to get this done, all we have to do COLLECTIVELY is to remove any such blockage.

Spooner Proposal:

Resolved:

That all Directors requests for information shall be submitted DIRECTLY to the Executive Director; that all National Board Committee requests for information shall be submitted BY COMMITTEE CHAIRS to the Executive Director; that all Local Station Board requests shall be submitted by the LSB Chair to the station General Manager; that all LSB Committee requests shall be submitted by the LSB Committee Chair to the station General Manager; and that responses to ALL such requests shall be made within five days, or if more time is needed, the requesting party shall be notified within five days that more time is needed; and that ANY request for information that the Executive Director or General Manager believes might be legally restricted shall be forwarded by the Executive Director to Pacificas legal counsel for advice, and that Pacificas legal counsel shall discuss the request with the requesting party, and if Pacificas legal counsel believes there is a legal basis for withholding the information requested, the matter shall be decided by the PNB.

5:11pm (EDT) Santa leaves meeting

Adelson Proposal:

1) Proposed communication policy for Directors:

Resolved:

That the Coordinating Committee shall meet biweekly, by telephone conference call, to coordinate Directors and other requests made during the preceding two weeks.

That any Director(s) in need of documents or information from Foundation Management personnel shall inform their local representative to the Coordinating Committee in writing via email.

That three days prior to the biweekly Coordinating Committee meeting, each Coordinating Committee member will aggregate all requests received in the preceding two weeks from their local signal area Directors, and will post these to the entire PNB.

The Chair of the Coordinating Committee shall assemble an agenda such that all items received are considered by the Coordinating Committee during its meeting, and shall post that agenda, along with all requests received, to the PNB at least 24 hours in advance of the Coordinating Committee meeting. All portions of the agenda that do not relate to confidential matters shall also be posted publicly at that time. In the event that some items involve confidential matters, the agenda shall include a portion that shall be held in closed session.

The biweekly meeting of the Coordinating Committee shall be held via telephone

conference call and in compliance with all meeting requirements regarding public access.

During its biweekly meeting, the Coordinating Committee will determine a timeframe for response to each request, and will establish who will be responsible for responding to the request. In general, it is expected that requests of information to be provided by management personnel will be assigned to the Executive Director to delegate to other personnel as appropriate.

In the event that the timeframe set by the Coordinating Committee for response to a request is unacceptable to the Director(s) making the request, the Director(s) may directly make the request of the Executive Director, specifying the timeframe in which the documentation is needed, and copying the PNB with the request via email.

If the Executive Director believes that the information request falls within the narrowly restricted range of requests which may legally be denied, s/he must submit the request to the Foundation counsel to provide an opinion on whether the information request may legally be denied. Foundation counsel shall speak with the requesting director concerning the request prior to providing his/her opinion. If Foundation counsel indicates that the request may not be denied, the Executive Director shall make arrangements with the requesting Director(s) to provide access to the needed documentation, copying the PNB with these communications. If Foundation counsel indicates that grounds exist for denying the request, then any further consideration of whether to meet the request must come before the full PNB at a regular or special meeting of the Board.

All decisions of the Coordinating Committee are subject to review and approval or reversal by the PNB.

At each regular meeting of the PNB, the Coordinating Committee report shall include a listing of all requests considered, including the dates on which they were considered, the dates agreed to for fulfillment of requests, and the actual dates of fulfillment of requests.

Upon adoption, this policy shall be communicated to all Directors, Delegates, management personnel, and staff.

## 2) Proposed communication policy for Local Station Boards:

Information requests from Local Station Boards shall be made to either local station management or to the Executive Director or CFO, as appropriate. These requests shall come via the LSB chair or the relevant LSB Committee or Subcommittee Chair, and shall be approved by the LSB or the relevant Committee or Subcommittee prior to being made.

Such requests shall also be communicated to the local National Coordinating Committee representative in writing via email, to be included for informational purposes in the list of information requests made of management personnel. The list of such requests shall be reported during the biweekly Coordinating Committee conference call.

In the event the information is not provided in a timely manner, or in the event of a difference of opinion between management and the LSB, Committee, or Subcommittee about the appropriateness of the request, the manager and/or

the Chair of the LSB, Committee, or Sub-committee shall submit the request in writing via email to the local National Coordinating Committee representative. During its biweekly meeting, the Coordinating Committee will determine a timeframe for response to each request, and will establish who will be responsible for responding to the request.

At each regular meeting of the PNB, the Coordinating Committee report shall include a listing of all requests considered, including the dates on which they were considered, the dates agreed to for fulfillment of requests, and the actual dates of fulfillment of requests.

Hicks proposal:

To form 3 committees to deal with: staff issues; board conduct - with possible sanctions; and information issues.

Roberts proposal:

No one will be able to deny an information request.

- Requests for confidential information to be accompanied by signed non-disclosure agreement.
- LSB requests by handled by committee chairs. Conflicts referred to ED, then PNB Coordinating Committee
- PNB requests to go through PNB Chair to ED, conflicts referred to PNB Coordinating Committee then attorney if necessary

Coughlin Proposal:

Coughlin withdraws proposal [see appendix] as issues are covered in other proposals.

Discussion of details and merits of proposals...

MOTION by Spooner to adopt Adelson proposal in order to handle information requests until the June 2004 PNB meeting. Seconded by Adelson.

Discussion of the Spooner motion and Adelson proposed policy.

5:27pm (EDT) Director Lane joins meeting.

Question called

Adelson - y

Allen - y

Cooper - y

Kolhatkar - y

Laforest - y

Lane y

Maldonado - y

Manning - y

Olusagun - y

Randhawa - y

Roberts - y

Rodriguez - y

Sanders - y

Schroell - y

Shakir - y

Shields - y

Spooner - y

Walker - n

Warren - y

18 yes, 1 no

Debate ends.

VOTE on Adelson proposal

Adelson - y

Allen - a

Cooper - n

Kolhatkar - y

Laforest - y

Lane n

Maldonado - y

Manning - y

Olusagun - n

Randhawa - n

Roberts - n

Rodriguez - y

Sanders - y

Schroell - y

Shakir - n

Shields - y

Spooner - y

Walker - n

Warren - n

10 yes, 8 no, 1 abstain

Adelson proposal PASSES

5:49pm Director Roberts, LSB chairs and others leave meeting

Next PNB Coordinating Committee meeting time set tentatively for Tues., May 4th, 3:30pm (EDT)

BEGIN EXECUTIVE SESSION - minutes in separate document

Submitted by, Roger Manning, Secretary, Pacifica Board of Directors

Approved by the Board of Directors on June 4, 2004.

## APPENDIX

1) Legal advice memo from Kevin Finck - Not posted here due to Attorney-Client privilege.

2) Letter read by Jim Bennett, KPFA GM

From: William B Harvey

To: Jim Bennett

CC: Dan Coughlin, Valerie Reyna

Subject: Improper behavior by local board members

Date: Tue, 27 Apr 2004 16:44:56 -0700

Dear Jim,



I am writing to protest in the strongest possible terms the behavior of some members of the new local station board toward KPFA staff, members of CWA Local 9415.

In the past few weeks there has been a series of intolerable incidents:

- A board member singled out individual staff, pointing her finger at them, and publicly telling them whom she liked and whom she did not;
- Another board member called staff "brainwashed", claimed they had "a slave mentality", and defamed the CWA by branding us a "bosses union";
- Staff have been yelled at and sworn at ("ruled your ass out of order", "thats some stupid shit") in public meetings, dismissed as irrelevant, denounced as "entrenched" and interested only in preserving their jobs.

These incidents amount to a pattern of mistreatment and harassment of staff by some members of the board and have created intolerable working conditions for union members. As General Manager of KPFA it is your job to insure a safe working environment in which staff can perform their job duties free from hostile interference by management. Thus I am writing to demand that you curb this abusive behavior.

Each of the incidents I have cited is documented and was witnessed. We are considering filing a formal grievance in this matter. We are also exploring other options should this behavior continue.

Once again, the abuse of KPFA staff and union members by some members of the local station board must be brought to a halt immediately.

Sincerely,

William B Harvey

Secretary-Treasurer

CWA Local 9415

3) Memo From Administrative Council - read by Georgia and Rojas

Dear Directors of the PNB,

Earlier this year, Pacifica reached a significant milestone in its 55-year history with the successful, network-wide election of listener and staff representatives to the five local station boards and to the National Board. These historic elections represented a major victory for media democracy in the United States. Many committed media activists who had struggled to save Pacifica from corporate take-over were elected to the boards and they have brought new energy and vitality to the network.

However, in their eagerness and enthusiasm to rectify the wrongs of the past

and to carry out their duties and responsibilities as directors and delegates, many members of the LSBs have exhibited a tendency and some have even articulated a desire to micromanage local station operations.

Over the past few weeks the management and staffs at all five stations have been bombarded with demands and requests for a wide-range of station information and for reports to the various committees that have been established by the LSBs. Some board members are calling for investigations into alleged malfeasance. Others are threatening legal action. These demands and threats have generated a confrontational and adversarial tone that does not bode well for harmonious board/staff relations.

Many staff members feel besieged and intimidated. As one staffer at WBAI put it half-jokingly, "we feel like we are the Falluja of Pacifica". Our jobs are being threatened. Management is being asked to report regularly to a Management Evaluation Committee even though the bylaws merely call for an annual, written evaluation of the general manager and the program director. The working conditions for both management and staff are intolerable. If this situation is not brought under control quickly we fear that it could escalate into a public relations disaster for the Network on the eve of our Spring fund drives and could further exacerbate already declining staff morale.

What is needed is a set of protocols that govern communications between staff and boards, but more importantly, we need to replace the climate of confrontation and mistrust with one of collaboration, collegiality and mutual respect throughout the Pacifica Network, an organization that is publicly identified as a defender of peace, social justice and workers rights.

While we support and recognize the governing boards rights of access to station information, many of the requests that we have received to date, especially in the areas of confidential personnel information and donor data, if complied with will expose both this board and senior staff at the Foundation to serious legal liability. All information that does not carry legal risk, however, will be made available once the communications protocols have been set up.

Over the course of our careers, some of us have had the opportunity to work in senior executive positions for major non-profits like the NAACP and the National Urban League and not once did we find the need to complain about micromanagement by the boards of these organizations. It was understood and respected by all that the board sets policies and strategic directions and the staff manages the day-to-day operations of the organization in accordance with their job descriptions.

Finally, as members of the Administrative Council of this network we urge the board to support the proposal for establishing three working committees representing all the stakeholders of Pacifica to address the growing crisis as put forward by the CFO. We also wish to take this opportunity to reaffirm our commitment to work cooperatively with the LSBs and with the PNB in the weeks and months ahead. Like you, we also are dedicated to enhancing democracy and transparency throughout Pacifica and we will continue to employ our skills and energy to growing and strengthening this network as a force for peace, justice and fairness in America and in the world.

Thanks for the opportunity to address this special meeting of the Pacifica National Board.

#### 4) Coughlin proposal:

### Pacifica Foundation Proposed Communications Flow and Policy

Via Email and Mail

#### Policy/Guidelines

Communication between Pacifica Foundation staff and its Board of Directors, or individual Directors on strategic issues, shall be conducted from:

\*Staff to General Managers

\*General Managers to Executive Director, and

\*Executive Director to Board Committee and/or full Board

#### Staff to PNB Information Flow and Procedure

1. The Pacifica Foundation staff may communicate directly with Directors in connection with Pacifica Foundation business:

a. At the express invitation of the Board

b. At the express invitation of the Executive Director and

c. In an extraordinary circumstance where there is not practicable alternative and significant injury to persons, loss of property or possible criminal activity might otherwise result.

Day-to-day interaction among all groups is encouraged.

2. A staff member wishing to address the Board may make a request in advance through his/her Department Head or the Executive Directors office. The request will be reviewed to assess appropriateness and ensure compliance with policy.

3. If a staff member calls a Board member to discuss a strategic or personnel issue, the staff member should be encouraged to work with his/her manager or to notify the Executive Director, if he/she has an issue with working through his/her manager.

4. Day to day interaction among all groups is encouraged. This policy applies to strategic, personnel and confidential issues or those issues related to a job description/performance.

#### PNB to Staff Information Flow and Procedure

1. Information requests from directors and delegates shall have a legitimate policy intent and be the product of a functioning committee where committee members have reviewed such requests before forwarding to the Executive Director for referral to staff.

2. The committee of record and the Chair must sign off on all director and delegate information requests for their reasonableness and policy intent.
  
3. All requests shall abide by the rules identified in the State of Californias Corporation Code Section 5210-5215.
  
4. Special information requests shall be made available to all committee or Board members at the same time. Where the special information requests involve privacy or rules of confidentiality, each board member must understand how important it is to abide by such requirements. Violations of confidentiality shall be subject to sanctions up to and including dismissal from the Board of Directors.
  
5. If a Board member contacts a staff member to discuss a strategic, confidential or personnel issues, the director should be encouraged to work with his/her Board committee and to go through the Executive Director. The point here is that staff can be confused as to who is their supervisor in situations where board members directly discuss, or try to provide direction to, staff members. This creates a liability of confused supervision and blurs the lines of accountability.

#### Overall Communications Flow Chart

Individuals at each level of the organization are empowered to make decisions that fall within their job description without outside interference. The following reporting structures are strongly recommended:

Executive Director - Communicate directly with Board Officers, Board Committees, LSBs, and/or Full Board of Directors as the case may be, resolving strategic, personnel, and confidential issues.

General Managers -- Communicate directly with Executive Director to resolve strategic, personnel and confidential issues. Would discuss strategic issues with Board of Directors based on a recommendation by Executive Director.

Staff -- Communicates directly with General Manager to resolve strategic, confidential, and personnel issues. Would discuss strategic issues with the Executive Director based on a recommendation by General Manager or union representative. Always best to resolve issues directly with the manager or managers in question.

Please Note: The above recommendations are regarding strategic, confidential and personnel issues only. Day-to-day interaction among all groups is encouraged.

In order for the above communication flow to be successful, it is critical that we support it from all sides (i.e., if a staff member calls a board member to discuss a strategic issue, the staff member should be encouraged to work through their manager or to notify the Executive Director if they have an issue with working through the manager).

#### Definitions

A strategic issue is one involving collective action and/or recommendations by the Board around policy or policy direction for the network, the Board, or station management. Where significant policy differences occur over these kinds of strategic issues, all attempts be made to resolve them. However, the intent

of this policy recommendation is that where a decision has been reached at any or all of the three levels, i.e., staff, management, Board, each manager, staff or board member must support the will of the majority with dissenting opinions, of course, recognized.

Confidential issues are ones that relate to an employees health, legal status, sexual orientation, gender preference, race, age, nationality etc. It also includes legal, employee, donor, privacy-related, and Pacifica proprietary information, including specific kinds of financial, vendor and banking information.

Personnel information refers to those employment items some of which are mentioned above under confidential but also include employee job performance and evaluation information, salaries, conditions of hire, occupation-related illness, legal and immigration status, domestic information of various kinds, marital status, social security numbers, and other employee data and identifiers.

ED Communication Responsibilities to the PNB:

Proposed Policy

With respect to providing information to the Pacifica National Board, the Executive Director may not permit the board to be uninformed on matters that significantly affect Pacifica Foundation. Accordingly, he/she may not:

1. Neglect to submit monitoring data required by the Board in a timely, accurate and understandable fashion, directly addressing the provisions of the Board policies being monitored.
2. Let the Board be unaware of relevant trends, anticipated litigation or material external and internal changes.
3. Fail to advise the Board if, in the Executive Directors opinion, the Board is not in compliance with its policies on Board operating, Board staff relationship and/or Board-Executive Director relationships.
4. Fail to marshal for the Board as many staff and external points of view, issues and options needed for informed Board choices.
5. Present information or give advice to the Board in unnecessarily complex or lengthy form, with significant gaps in materiality, timeliness, completeness or accuracy.
6. Fail to provide a mechanism for official Board, officer or committee communications.
7. Fail to deal with the Board as a whole with regards to strategic and policy issues.